IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 977 of 1993

For Approval and Signature:

Hon'ble MR.JUSTICE J.M.PANCHAL

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

DY EXECUTIVE ENGINEER

Versus

BHATT RAJESH POPATLAL

Appearance:

1. Special Civil Application No. 977 of 1993

MR HD DAVE, AGP, for Petitioner

MR YOGESH S LAKHANI for Respondent

CORAM : MR.JUSTICE J.M.PANCHAL

Date of decision: 28/03/2003

ORAL JUDGEMENT

The Deputy Executive Engineer, Road & Building, Sub-Division (City), Panvadi, Bhavnagar, has filed

instant petition under Article 227 of the Constitution, and prayed to set aside order and award dated February 20, 1992, rendered by the Labour Court, Bhavnagar in Reference (LCB) No.163/90, by which he is directed to reinstate the respondent in service with full back wages.

2. The respondent was employed as a Rojamdar Clerk in the year 1982 and was paid salary of Rs.444/-per month. His services were terminated orally on July 31, 1985, which according to him, was contrary to the provisions of the Industrial Disputes Act, 1947 ("the I.D.Act" for short). He had raised a dispute challenging legality of action by which his services were orally terminated on July 31, 1985. On failure of conciliation proceedings, the dispute was referred to Labour Court, Bhavnagar for adjudication, where it was numbered as Reference (LCB) No.163/90. A statement of claims was submitted by the respondent at Exh.3. Though the petitioner was duly served, no reply was filed by him before the Labour Court and the petitioner had remained absent when the case was taken up for hearing by the Labour Court. Before the Labour Court, deposition of the respondent was recorded on January 6, 1992 indicating that he had put in more than 240 days of service in a completed year. However, as the petitioner had not participated in the proceedings before the Labour Court, the respondent-workman was not cross-examined. The respondent-workman had also produced documentary evidence to substantiate his case which was mentioned in the statement of claims. On consideration of the evidence adduced by the respondent-workman, the Labour Court was of the view that termination of services of the respondent-workman was contrary to the provisions of Section 25-F of the I.D.Act. In view of the said conclusion, the Labour Court by the impugned award has directed the petitioner to reinstate the respondent in service with full back wages, giving rise to instant petition.

3. The petition was placed for admission hearing before Division Bench on February 12, 1993, and after hearing the learned counsel for the parties, following order was passed :

> "Rule. Interim relief as regards stay of reinstatement in service is refused. As far as the direction for payment of back wages is concerned, it is ordered that the said direction is stayed on condition that the petitioner pays 50% of the amount of back wages to the respondent-workman on or before March 15, 1993.

> If the amount is not paid by March 15, 1993, it shall carry interest at the rate of 12% per annum. Balance of the 50% of the amount of back wages may be retained by the petitioner subject to the result of the petition".

4. I have heard the learned counsel for the parties. The plea that the Labour Court was not justified in proceeding exparte against the petitioner and, therefore, the impugned award is liable to be set aside, cannot be accepted. The record of the case would indicate that the petitioner was duly served with notice Exh.4, but the petitioner had chosen not to participate in the proceedings before the Labour Court. Under the circumstances, the Labour Court was left with no option, but to proceed exparte against the petitioner.The record shows that more than sufficient opportunity was afforded to the petitioner to present his case, but the petitioner had failed to avail of the said opportunity. Under the circumstances, the impugned award is not liable to be set aside on the ground that the Labour Court was not justified in proceeding exparte against the petitioner.

The next contention that there was no breach of provisions of Section 25-F of the I.D.Act and, therefore, reinstatement of the respondent in service should not have been ordered, is devoid of merits. The evidence produced by the respondent unerringly establishes that he had put in more than 240 days of service in each completed year. The assertion made by the respondent-workman that he had put in more than 240 days of service in each completed year, could not be demonstrated by the petitioner to be factually incorrect. In Rattan Singh v. Union of India & Anr. (1997)11 SCC 396 the Supreme Court has taken the view that the provisions of Section 25-F of the Industrial Disputes Act, 1947 are applicable to termination of even a daily rated workman who had continuously served for the requisite statutory minimum period in a year. As the oral termination of services of the respondent was found to be contrary to the provisions of Section 25-F of the I.D.Act, this Court is of the view that no error was committed by the Labour Court in directing the petitioner to reinstate the respondent in service.

The third contention that the Labour Court was not justified in directing the petitioner to pay full back-wages to the respondent-workman, deserves consideration. The learned counsel of the respondent-workman has stated at the Bar that pursuant to interim order dated February 12, 1993, the respondent has

been reinstated in service and paid 50% of back wages. Neither the award nor the evidence of the respondent-workman indicates that during the interregnum period the petitioner was not gainfully employed. The record of the case further indicates that though the services of the respondent-workman were terminated on July 31, 1985, he had raised dispute on April 20, 1990 and no explanation was offered by the respondent-workman as to why there was delay on his part in raising the dispute. The Supreme Court has explained in several reported decisions that back wages automatically need not follow in case of reinstatement. On overall view of the matter, the Court is satisfied that the Labour Court was not justified in directing the petitioner to pay full back wages to the respondent, and that having regard to the facts of the case, the respondent-workman would be entitled to 50% of back wages. Therefore, the impugned award deserves to be suitably modified.

5. For the foregoing reasons, the petition partly succeeds. The award and order dated February 20, 1992 rendered by the Labour Court, Bhavnagar, in Reference (LCB) No.163/90 is hereby partly modified. The direction given by the Labour Court to the petitioner to reinstate the respondent in service is hereby upheld. Further, it is held that the respondent-workman would be entitled to 50% of back wages and not full back wages as directed by the Labour Court. Rule is made absolute to the extent indicated hereinabove. There shall be no order as to costs. Interim relief granted earlier is hereby vacated.

(J.M.Panchal,J.)

(patel)